



122

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 424 of 2006

Petitioner : Kamal Say

Versus

Respondents : The State of Chhattisgarh and others

Post for order on 20th April, 2007

Sd/-
Satish K. Agnihotri
Judge

(1583)

HIGH COURT OF CHHATTISGARH AT BILASPUR
Writ Petition No. 424 of 2006

Petitioner

Kamal Say S/o Saryu Ram, age 21
years, Panchayat Karmi (Secretary)
Gram Panchayat Madanpur, Tehsil
Surajpur, District Surguja, C.G.

Versus

Respondents

1. The State of Chhattisgarh, through
Secretary, Panchayat D.K.S.
Bhawan, Raipur, C.G.)
2. Gram Panchayat Madanpur, through
Sarpanch, Tehsil Surajpur, District
Surguja, C.G.
3. Deputy Director, Panchayat & Social
Welfare, Surguja, At/Post
Ambikapur, District Surguja, C.G.
4. Chief Executive Officer, Janpad
Panchayat Surajpur, District Surguja,
C.G.

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

SB: Hon'ble Justice Shri Satish K. Agnihotri

Present: Mr. A.K. Prasad, counsel for the petitioner.
Mr. Sushil Dubey, Govt. Advocate for the respondents No. 1
and 3/State.
None appears for respondent No. 2.
Mr. A.S. Kachhawaha, counsel for the respondent No. 4.

ORDER

(Passed on this 20th day of April, 2007)

1. By this petition, filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 28.12.2005 (Annexure P/1), passed by the Deputy Director, Panchayat and Social Welfare, Surguja, whereunder the petitioner was removed from the post of the Panchayat Secretary.
2. The indisputable facts, in nutshell, are that pursuant to the resolution dated 5.4.2005, passed by the Gram Panchayat, Madanpur and approved by the Gram Sabha in its meeting, held on 18.10.2005, the petitioner was appointed as Panchayat Karmi vide order dated

22.10.2005 (Annexure P/4). Thereafter, vide order dated 22.10.2005 (Annexure P/6), he was appointed as Panchayat Secretary under the provisions of Section 69 (1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as 'the Adhiniyam, 1993'). On the basis of some preliminary enquiry held against the petitioner, he was removed from the post of the Panchayat Secretary vide order dated 28.12.2005 (P/1).

3. Mr. A.K. Prasad, learned counsel appearing for the petitioner would submit that no opportunity of hearing was afforded to him and no charge-sheet was issued as envisaged under Rule 7 of the Rules, 1999. Thus, the impugned order is vitiated and deserves to be quashed.
4. Mr. Sushil Dubey, learned Government Advocate appearing for the respondents No. 1 and 3 and Mr. A.S. Kachhawaha, learned counsel appearing for the respondent No. 4 would submit that admittedly, no notice was given to the petitioner, however, a preliminary enquiry was conducted before passing the impugned order. Thus, there was substantive compliance of the principles of natural justice and fair play in action.
5. The respondent No. 2/Gram Panchayat, Madanpur, in its return dated 5.7.2006, as stated that since there was irregularity in the selection/appointment of the petitioner as Panchayat Karmi of Gram Panchayat, Madanpur, he was rightly removed from the office of the Panchayat Secretary.
6. After hearing learned counsel appearing for the parties and perusing the pleadings and documents appended thereto, it is evident that no notice was given to the petitioner.
7. A Division Bench of this Court in Writ Petition No. 1656 of 2004 (Rooplal Nayak Vs. The State of Chhattisgarh & others) has held that

125

removal of a Secretary from the post of Gram Panchayat, initially appointed as Panchayat Karmi would be governed by the provisions of Madhya Pradesh Panchayat Service (Discipline and Appeal) Rules, 1999 (for short 'The Rules, 1999'). Withdrawal of charge of the post of Secretary from the petitioner, being Panchayat Karmi, tantamounts to reduction in rank and since 'reduciton in rank is a major penalty in terms of Rule 5 (b) (iv) of the Rules, 1999, it cannot be imposed without conducting a regular departmental enquiry as envisaged under Rule 7 of the Rules, 1999.

8. It is admitted case that no enquiry was conducted before passing the impugned order dated 28.12.2005 (Annexure P/1). The impugned action of the respondents tantamounts to removal which is a major penalty and the same cannot be imposed without conducting a regular enquiry.
9. For the aforesaid reasons, this petition is allowed and the impugned order dated 28.12.2005 (Annexure P/1) is quashed. Consequently, the petitioner is entitled to all the benefits, pecuniary and otherwise.
10. It is made clear that this order will not come in the way of the Respondent/Gram Panchayat or any other respondent, as the case may be, from initiating the disciplinary action against the petitioner, if so advised, in accordance with law and in terms of the procedure prescribed in Rule 7 of the Rules, 1999.
11. In the facts and circumstances of the case, the parties shall bear their own costs.

Sd/-
Satish K. Agnihotri
Judge